

ORIGINAL



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Transcript Exhibit(s)

Docket #(s): W-20919A-16-0068

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Arizona Corporation Commission

**DOCKETED**

APR 04 2016

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*pk*

Exhibit #: A-1 ; S-1 ; S-2

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ORIGINAL

NEW APPLICATION

Snell & Wilmer

L.L.P.  
LAW OFFICES

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Timothy J. Sabo  
(602) 382-6347  
tsabo@swlaw.com

EXHIBIT

A-1  
ADMITTED

A-1

LOS ANGELES  
LOS CABOS  
ORANGE COUNTY  
PHOENIX  
RENO  
SALT LAKE CITY  
TUCSON

February 24, 2016

Arizona Corporation Commission  
DOCKETEL

FEB 24 2016

**BY HAND DELIVERY**

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007

W-20919A-16-0068

DOCKETED BY	<i>MS</i>
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Re: Application to transfer assets from Arizona Windsong Water Company to the Navajo Tribal Utilities Authority

**To Whom it May Concern:**

In Decision No. 75083, the Arizona Corporation Commission ("Commission") approved the transfer of assets from Arizona Windsong Realty, Inc. to Arizona Windsong Water Company ("Arizona Windsong"). The Decision also issued a Certificate of Convenience and Necessity ("CC&N") to Arizona Windsong in accordance with Commission Staff's recommendations that the Commission condition the CC&N upon Arizona Windsong's compliance with the past compliance requirements placed on Arizona Windsong Realty, Inc. by December 31, 2015. Staff further recommended that the Commission revoke Arizona Windsong's CC&N if Arizona Windsong did not timely satisfy the outstanding compliance requirements. Due to circumstances outside of Arizona Windsong's control, Arizona Windsong informed the Commission that it will not satisfy all of the above-mentioned compliance requirements by December 31, 2015. The Commission accordingly revoked Arizona Windsong's CC&N in Decision No. 75407 (Jan. 19, 2016).

The Navajo Tribal Utilities Authority ("NTUA") has indicated that NTUA is considering extending service to Arizona Windsong's customers. Although NTUA ultimately intends to use grant money to build a new distribution system, the NTUA would like to acquire Arizona Windsong's existing distribution system, and use the existing distribution system to deliver water from NTUA's water supplies. Arizona Windsong does not have access to an adequate water supply due to uranium contamination of its water supply; NTUA has access to uncontaminated water. Thus, the transfer of assets to NTUA is in the public interest.


Docket Control  
February 24, 2016  
Page 2

Accordingly, Arizona Windsong requests authority from the Commission under A.R.S. § 40-285 to transfer its distribution system assets to NTUA. NTUA will provide service under its existing tariffs, which are attached as Exhibit A. In addition, NTUA will be requesting a one-time capital contribution of \$500.00 per customer, which can be paid in installments over two years. NTUAs draft letter to customers regarding the \$500.00 capital contribution is attached as Exhibit B.

Arizona Windsong does not have any main extension agreements. Arizona Windsong does not have any customer deposits to refund. Arizona Windsong requests that the Commission issue the approval as soon as possible so that the NTUA can proceed as soon as it is ready.

Very truly yours,

Snell & Wilmer

A handwritten signature in dark ink, appearing to read "Timothy J. Sabo", followed by a long horizontal line extending to the right.

Timothy J. Sabo

TJS:jh

Original and 13 Copies to Docket Control

cc: Lillie Paulsell

Laurie Woodall, Esq.

Matthew Laudone, Esq.

## **Exhibit A**

## NAVAJO TRIBAL UTILITY AUTHORITY UTILITY RATES

### Water Rates

#### Residential Water Service

- **Availability**

Available to water customers of the Authority located along existing mains in the communities served by the Authority.

**Applicability**

Applicable to domestic water service to individual residences, separate dwelling units, and individually piped apartments where service is provided at one point of delivery through one meter.

**Character of Service**

Water for domestic, sanitary, and other purposes at suitable pressure for household use, subject to availability at the premises of adequate capacity and sized mains.

**Net Monthly Rate**

The monthly billing shall be the sum of the service charge and the usage charge set forth below:

<u>Service Charge</u>	<u>* Rate Code</u>	
1" or smaller meter	61	\$ .89
2" or larger meter	62	25.74
 <u>Usage Charge</u>		
First 3,000 gallons	\$ 3.51 per 1,000 gallons	
All Additional gallons	5.44 per 1,000 gallons	

**Monthly Minimum Charge**

The minimum monthly charge shall be not less than the service charge.

**Terms and Conditions**

Subject to the Authority's rules and regulations for water service.

### GENERAL WATER SERVICE

**Availability**

Available to water customers of the Authority located along existing mains in the communities served by the Authority.

**Applicability**

Applicable to commercial, industrial, public institutions, and all other classes of water use other than for strictly residential purposes only. All residences used for business, professional, or commercial purposes shall also be considered as General customers. Service shall be delivered through a single meter at one point of delivery, acceptable to the Authority.

**Character of Service**

Water for domestic, commercial industrial, sanitary, or other purposes at suitable pressure for the intended use, subject to availability at the premises of adequate capacity and sized mains.

**Net Monthly Rate**

The monthly billing shall be the sum of the service charge and the usage charge set forth below:

<u>Service Charge</u>	<u>* Rate Code</u>	
1" meter or smaller	64	\$ 26.91
2" meter	65	53.81
3" meter	66	98.27
4" meter	67	195.37
6" meter or larger	69	397.75
	79	Flat Rate
<u>Usage Charge</u>		
All Water		\$ 6.08 per 1,000 gallons

**Monthly Minimum Charge**

The minimum monthly charge shall be not less than the service charge.

**Terms and Conditions**

Subject to the Authority's rules and regulations for water service.

**SPECIAL TEMPORARY WATER SERVICE****Availability**

Available to temporary customers where mains of adequate capacity and suitable pressure are in existence at the location to be served. Service hereunder is limited to a single fire hydrant considered suitable by the Authority.

**Applicability**

Applicable to construction needs and other temporary use, as determined by the Authority.

**Character of Service**

Water for domestic, sanitary and construction or other temporary uses, subject to availability of adequate supply.

**Net Monthly Rate**

The charge shown elsewhere in this schedule plus \$6.73 per 1,000 gallons.

**Monthly Minimum Charge**

The minimum charge shall be \$400.00 per service location per month.

**Special Conditions**

A. Service hereunder shall be made through a special meter furnished and installed by the Authority on the selected hydrant.

B. Customer must use the gate valve furnished with the meter assembly and under no circumstances shall the hydrant valve be operated or tampered with by the customer.

C. There shall be a \$200.00 one-time fee plus a discretionary \$300.00 meter deposit for private contractors to guarantee the return of such meter assembly to the Authority in an undamaged condition.

D. The Authority retains the right in its sole discretion to impose a charge of \$300.00 per day for service hereunder from the day of initial service on the date of the last meter reading in the event the meter is broken or has been tampered with and such damage is not promptly reported to the Authority.

E. Service hereunder is considered a non-essential use and in periods of short supply, service hereunder is subject to disconnection without notice to customer.

F. A \$200.00 one-time fee shall be charged to tribal entities for meter installation.

#### **Terms and Conditions**

Subject to the Authority's rules and regulations for water service.

---

### **LIFE SUPPORT/SENIOR CITIZENS DISCOUNT PROGRAM** **(RESIDENTIAL WATER SERVICE)**

#### **Availability**

Available to water customers of the Authority located along existing mains in the communities served by the Authority.

#### **Applicability**

Applicable to domestic water service billed under Rate Schedule WR-01 where the customer has otherwise qualified for the discounted rate as specified at Rule 26. The rate set forth herein shall supersede the discount at Rule 26. All provisions of the Residential Water Rate Schedule WR-01 will apply except as modified herein.

#### **Net Monthly Rate**

The monthly billing shall be in the accordance with Rate Schedule WR-01 except as follows:

<u>Service Charge</u>	<u>* Rate Code</u>	
1" or smaller meter	25	\$ -0-
2" or larger meter	26	\$ -0-
 <u>Plus:</u>		
<u>Usage Charge</u>		
First 3,000 gallons	\$ 3.16 per 1,000 gallons	
All Additional	\$ 4.90 per 1,000 gallons	

**Monthly Minimum Charge**

The minimum monthly charge shall be not less than the service charge.

**Terms and Conditions**

Subject to the Authority's rules and regulations for water service.

[Click Here](#) to download application. (PDF Format)



## **Exhibit B**

(DATE)

(Participant)

(Address)

(Address)

(Address)

SUBJECT: Transfer of Assets - Arizona Windsong Water Company

Dear (Participant):

The Navajo Tribal Utility Authority (NTUA) supports and accepts the transfer of assets from Arizona Windsong Water Company. NTUA will commit to the acceptance of transfer, system operation and maintenance upon completion. NTUA intends to seek funding to rebuild and replace the aged system with a completely new system sometime in the near future.

NTUA is requesting customer participation in the amount of \$500.00 per participant. This one-time capital investment contribution can be paid over time with a payment arrangement of 1 or 2 years.

In the immediate interim, NTUA is purchasing the existing pipes – minus the contaminated well. We will connect the existing pipe network to our system and begin providing approved and tested clean drinking water that meets Navajo Nation EPA and Federal Drinking Water Standards.

Please concur your participation by returning this letter with your intent to participate. Do not send your payment at this time. Once we have heard from all participants, we will contact you again with appropriate paperwork to initiate this participation. Thank you.

Sincerely,

Rex P. Kontz, Deputy General Manager  
NAVAJO TRIBAL UTILITY AUTHORITY

cc: Walter W. Haase, P.E., General Manager, Office of the General Manager  
Rayni Nelson, Assistant Manager, Office of the DGM  
Paula Holyan, Manager, Fort Defiance District

File/Chrono

ORIGINAL

MEMORANDUM



TO: Docket Control

FROM: Thomas M. Broderick  
for Director  
Utilities Division

*Ameyo S*

DATE: March 18, 2016

RE: STAFF REPORT IN THE MATTER OF THE APPLICATION OF ARIZONA WINDSONG WATER CO. FOR APPROVAL TO TRANSFER UTILITY ASSETS TO THE NAVAJO TRIBAL UTILITIES AUTHORITY (DOCKET NO. W-20919A-16-0068)

Attached is the Staff Report for the Application of Arizona Windsong Water Company for Approval to Transfer Utility Assets to the Navajo Tribal Utilities Authority, Docket No. W-20919A-16-0068.

TMB:VW:nr/ML

Originator: Vicki Wallace

Arizona Corporation Commission

DOCKETED

MAR 18 2016

DOCKETED BY	<i>K9</i>
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AZ CORP COMMISSION  
DOCKET CONTROL

Service List for: Arizona Windsong Water Co.  
Docket No. W-20919A-16-0068

Timothy Sabo  
Snell & Wilmer, LLP  
One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004

Mr. Thomas M. Broderick  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Janice M. Alward  
Chief, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Dwight Nodes  
Chief Administrative Law Judge, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

**STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

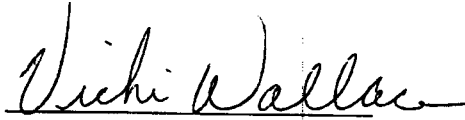
**ARIZONA WINDSONG WATER CO.  
DOCKET NO. W-20919A-16-0068**

**IN THE MATTER OF THE APPLICATION OF ARIZONA WINDSONG WATER CO.  
TO TRANSFER ASSETS TO NAVAJO UTILITIES AUTHORITY**

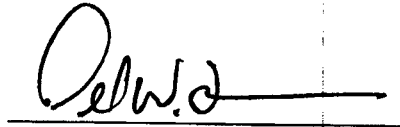
**MARCH 18, 2016**

## STAFF ACKNOWLEDGMENT

The Staff Report for Arizona Windsong Water Co. Docket No. W-20919A-16-0068 was prepared by the Staff members shown below.

A handwritten signature in cursive script, reading "Vicki Wallace", written over a horizontal line.

Vicki Wallace  
Executive Consultant

A handwritten signature in cursive script, reading "Katrin Stukov", written over a horizontal line.

Katrin Stukov  
Utilities Engineer

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## INTRODUCTION

On February 24, 2016, Arizona Windsong Water Company ("Arizona Windsong", "Applicant" or "Company"), through its attorney, docketed an application with the Arizona Corporation Commission ("ACC" or "Commission") to transfer assets to the Navajo Tribal Utilities Authority ("NTUA"). The Certificate of Convenience and Necessity ("CC&N") previously granted by the ACC in Decision No. 75083 was revoked via Decision No. 75407 issued January 19, 2016, due to uranium contamination of its water supply. The Decision also required Arizona Windsong to continue to provide service at approved rates to customers until a new provider is ready, willing, and able to provide adequate service to customers within Arizona Windsong's service territory. The area formerly covered by the CC&N is approximately 1,662 acres (approximately 2.6 square miles). Exhibit 1 is an Engineering's map of the service territory.

## BACKGROUND AND ANALYSIS

Arizona Windsong provides water service to approximately 68 residential customers and 1 commercial customer in Apache County near the Town of Sanders, Arizona (approximately 50 miles east of Holbrook). According to the application, Arizona Windsong does not have the capability to provide safe drinking water to its customers, and NTUA has access to an adequate safe drinking water supply that meets Navajo Nation EPA and Federal Drinking Water Standards. Additionally, the ACC has received numerous complaints within the last 3 three years mostly in relation to quality of service and billing.

The NTUA, a multi-service utility of the Navajo Nation, provides electric, natural gas, water and wastewater utility services to the residents of the Navajo Nation and surrounding areas. According to its website NTUA serves approximately 39,400 electric customers, 36,600 water, 13,600 waste water customers, 7,900 natural gas customers. The NTUA has expressed its willingness to interconnect its water system with the Company's existing distribution piping network and extend NTUA water service to Arizona Windsong customers. If the transfer is approved by the ACC, NTUA will be responsible for the water system's operation and maintenance. NTUA intends to seek funding to rebuild/replace the aged Arizona Windsong distribution system in the near future. Attached as Exhibit 2 is Staff's Engineering Report.

NTUA will provide service under its existing tariffs, which are attached to the application and are far less than the current tariffed rates charged by Arizona Windsong. A comparison of the rate impact is provided in Exhibit 3. In short, NTUA's rates would decrease the typical Arizona Windsong residential 5/8 x 3/4-inch meter bill with an average usage of 10,100 gallons from \$84.00 to \$49.50, or a (\$34.62) or (41.16) percent decrease.

The NTUA will, however, be requesting a one-time investment contribution of \$500.00 per customer, which can be paid in installments over two years. In the interim, NTUA is purchasing the existing pipes, minus the contaminated well. NTUA will then connect the existing pipe network to its system and begin providing safe water. A draft letter from NTUA to the customers of Arizona Windsong regarding the transfer and conditions thereof was attached to the application and will be sent upon approval of the transfer. NTUA has verbally indicated the customers appear excited about

the NTUA's intent to serve, and the Applicant as well as NTUA request the transfer of assets in an expedited manner to remove any impediment to the NTUA immediately extending service.

Arizona Windsong does not have any main extension agreements. Additionally, Arizona Windsong does not have any customer deposits to refund.

### **AGREEMENT AND BILL OF SALE**

An Agreement and Bill of Sale ("Agreement") which is attached as Exhibit 4 has been reviewed and approved by both parties and will be executed upon the ACC approval of the transfer. Under this Agreement, NTUA will pay to Arizona Windsong a sum of \$10,000 for its water distribution system including all pipes, service lines and meters. The Agreement provides that upon NTUA's acquisition of the distribution system, Arizona Windsong will cease operating as a water utility; and NTUA will be responsible for providing water utility services to Arizona's Windsong's customers under the terms and conditions of the NTUA tariff.

### **PUBLIC INTEREST**

Arizona Windsong does not currently have access to an adequate water supply due to uranium contamination of its water supply. NTUA does have access to uncontaminated water and is willing to interconnect Arizona Windsong's customers to its system. Thus, Staff believes the proposed transfer is in the public interest, and the water system should be transferred to NTUA as soon as possible. There was no public opposition expressed to the ACC on the transfer of Arizona Windsong to NTUA.

### **PUBLIC SERVICE CORPORATION STATUS**

In compliance with Decision No. 75407, once NTUA begins to provide service to the customers, Arizona Windsong should file notification with the Commission as ordered within thirty (30) days. Upon receipt of the notification, Staff believes Arizona Windsong would no longer be functioning as a Public Service Corporation; and its status as such should be terminated.

### **STAFF RECOMMENDATIONS**

Staff recommends that the application of Arizona Windsong Water Company to transfer its assets to the Navajo Tribal Utilities Authority be approved, and the water system transferred to NTUA upon Commission approval. Further, once Arizona Windsong provides notice of NTUA providing service, Arizona Windsong's status as a Public Service Corporation should be terminated.

MEMORANDUM

TO: Vicki Wallace  
Executive Consultant III  
Utilities Division

FROM: Lori H. Miller  
GIS Specialist *lh*  
Utilities Division

THRU: Del Smith *DS*  
Engineering Supervisor  
Utilities Division

DATE: March 15, 2016

RE: ARIZONA WINDSONG WATER COMPANY (DOCKET NO. W-20919A-16-0068)

Arizona Windsong Water Company has filed an application to transfer its assets to Navajo Tribal Utilities Authority.

Attached is a copy of the map for your files.

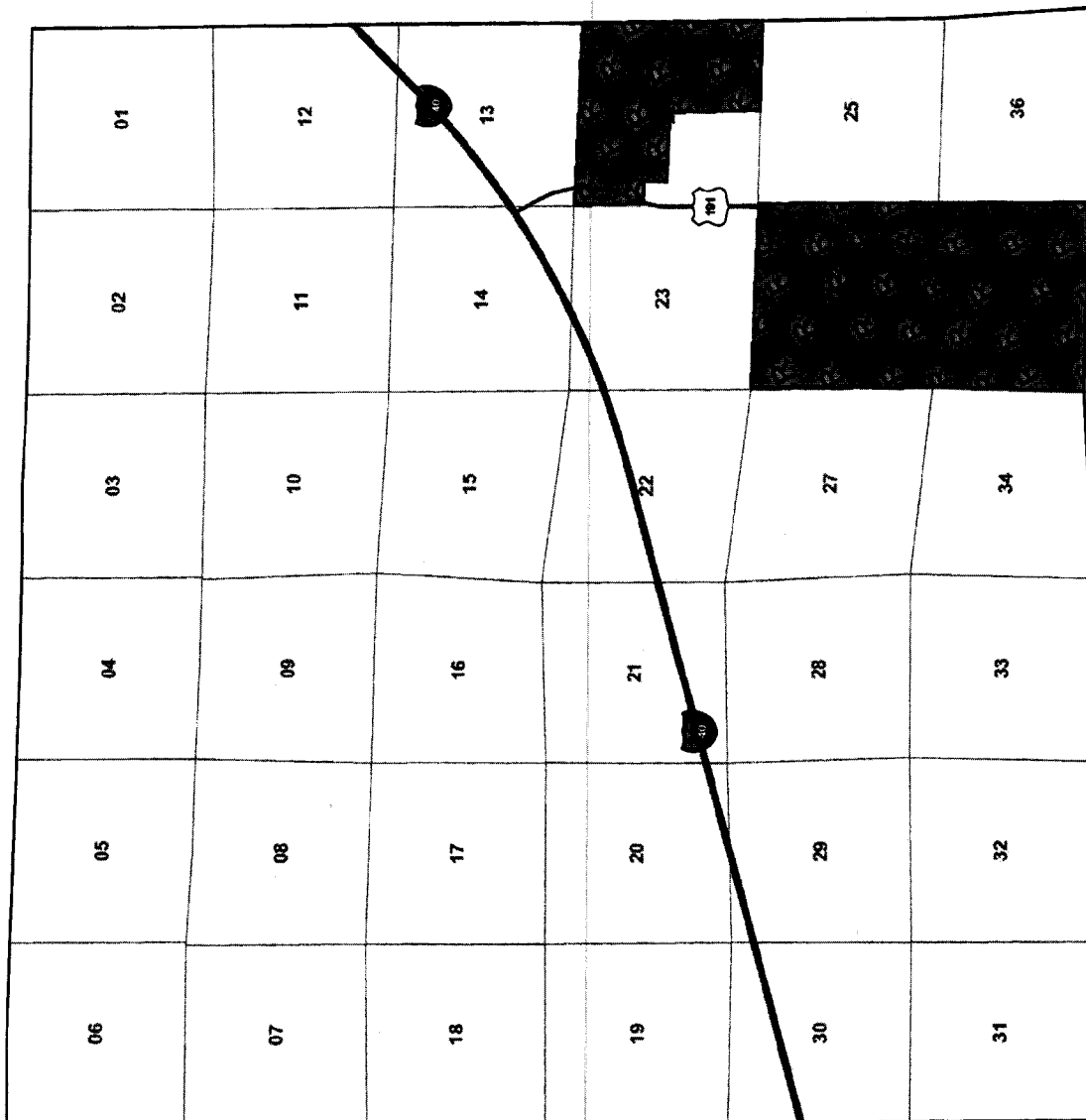
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Attachment

cc: Mr. Timothy J. Sabo  
Ms. Katrin Stukov  
Ms. Deb Person (Hand Carried)  
File

# APACHE COUNTY

## RANGE 28 East



W-20919A (1)

Arizona Windsong Water Company

(1)

Application for transfer to  
Navajo Tribal Utilities Authority  
(Revoked by Decision No. 75407)




Prepared by:  
Arizona Corporation Commission  
Utilities Division  
Engineering Section/GIS Mapping  
602-542-4251

Pursuant to ARS § 39-121.03 this map is 'Not for Commercial Use'

TR21N28E 19 JAN 2016

## MEMORANDUM

TO: Vicki Wallace  
Executive Consultant  
Utilities Division

FROM: Katrin Stukov   
Utilities Engineer  
Utilities Division

DATE: March 4, 2016

RE: Arizona Windsong Water Company (Application to transfer utility assets)  
Docket No. W- 20919A-16-0068

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On February 24, 2016 the Arizona Windsong Water Company ("Windsong" or "Company") filed with the Arizona Corporation Commission ("ACC") an application to transfer its distribution system assets to the Navajo Tribal Utilities Authority ("NTUA").

The Company is providing service to approximately 69 customers<sup>1</sup> near the Town of Sanders (approximately 50 miles east of Holbrook) in Apache County. According to the application, Windsong does not have capability to provide safe drinking water to its customers and NTUA has access to an adequate safe drinking water supply that meets Navajo Nation EPA and Federal Drinking Water Standards. According to the application, NTUA is planning to interconnect its water system with the Company's existing distribution piping network and extend NTUA water service to Windsong customers. NTUA will be responsible for the water system's operation and maintenance. NTUA intends to seek funding to rebuild/replace the aged Windsong distribution system in the near future.

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<sup>1</sup> Per Docket No. 14-0376

Transfer of Assets From Arizona Windsong  
Docket No. W-20919A-16-0068

### TYPICAL BILL ANALYSIS

Arizona Windsong Water Company  
5/8 x 3/4 - Inch Meter

Company Proposed	Gallons	Arizona Windsong Present Rates	Arizona Windsong Proposed NTUA Rates	Dollar Decrease	Percent Decrease
Average Usage	10,100	\$ 84.12	\$ 49.50	\$ (34.62)	-41.16%
Median Usage	3,736	\$ 52.80	\$ 15.42	\$ (37.38)	-70.79%
<b>Staff Recommended</b>					
Average Usage	10,100	\$ 84.12	\$ 49.50	\$ (34.62)	-41.16%
Median Usage	3,736	\$ 52.80	\$ 15.42	\$ (37.38)	-70.79%

Present & Proposed Rates (Without Taxes)  
General Service 5/8 x 3/4-Inch Meter

	Arizona Windsong Present		Arizona Windsong Proposed NTUA Rates		%	Staff Recommended NTUA Rates		%
	5/8*		5/8*			5/8*		
	Minimum Charge	#####	Minimum Charge	\$ 0.89		Minimum Charge	\$ 0.89	
	1st Tier Rate	#####	1st Tier Rate	3.5100		1st Tier Rate	3.5100	
	1st Tier Breakover	3,000	1st Tier Breakover	3,000		1st Tier Breakover	3,000	
	2nd Tier Rate	#####	2nd Tier Rate	5.4400		2nd Tier Rate	5.4400	
	2nd Tier Breakover	#####	2nd Tier Breakover	10,000		2nd Tier Breakover	10,000	
	3rd Tier Rate	#####	3rd Tier Rate	5.4400		3rd Tier Rate	5.4400	
Gallons Consumption	Rates		Rates	Decrease		Rates	Decrease	
-	\$ 37.12		\$ 0.89	-97.60%		\$ 0.89	-97.60%	
1,000	41.12		4.40	-89.30%		4.40	-89.30%	
2,000	45.12		7.91	-82.47%		7.91	-82.47%	
3,000	49.12		11.42	-76.75%		11.42	-76.75%	
3,736	52.80		15.42	-70.79%		15.42	-70.79%	
4,000	54.12		16.86	-68.85%		16.86	-68.85%	
5,000	59.12		22.30	-62.28%		22.30	-62.28%	
6,000	64.12		27.74	-56.74%		27.74	-56.74%	
7,000	69.12		33.18	-52.00%		33.18	-52.00%	
8,000	74.12		38.62	-47.90%		38.62	-47.90%	
9,000	79.12		44.06	-44.31%		44.06	-44.31%	
10,000	84.12		49.50	-41.16%		49.50	-41.16%	
11,000	89.12		54.94	-38.35%		54.94	-38.35%	
12,000	94.12		60.38	-35.85%		60.38	-35.85%	
13,000	100.12		65.82	-34.26%		65.82	-34.26%	
14,000	106.12		71.26	-32.85%		71.26	-32.85%	
15,000	112.12		76.70	-31.59%		76.70	-31.59%	
16,000	118.12		82.14	-30.46%		82.14	-30.46%	
17,000	124.12		87.58	-29.44%		87.58	-29.44%	
18,000	130.12		93.02	-28.51%		93.02	-28.51%	
19,000	136.12		98.46	-27.67%		98.46	-27.67%	
20,000	142.12		103.90	-26.89%		103.90	-26.89%	
25,000	172.12		131.10	-23.83%		131.10	-23.83%	
30,000	202.12		158.30	-21.68%		158.30	-21.68%	
35,000	232.12		185.50	-20.08%		185.50	-20.08%	
40,000	262.12		212.70	-18.85%		212.70	-18.85%	
45,000	292.12		239.90	-17.88%		239.90	-17.88%	
50,000	322.12		267.10	-17.08%		267.10	-17.08%	
75,000	472.12		403.10	-14.62%		403.10	-14.62%	
100,000	622.12		539.10	-13.34%		539.10	-13.34%	

**Agreement and Bill of Sale**

This transfer agreement and bill of sale (the "Transfer Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date") by and between Navajo Tribal Utility Authority (NTUA), an enterprise of the Navajo Nation and Arizona Windsong Water Co. (Arizona Windsong)

**Recitals**

1. Arizona Windsong is a water utility regulated by the Arizona Corporation Commission serving an area in or about Sanders, Arizona in an area more completely described in Arizona Corporation Commission Decision Nos. 75083 and 75407.
2. NTUA, a multi-service utility of the Navajo, provides water and wastewater utility services to the residents of the Navajo Nation and surrounding areas, as designated.
3. The Arizona Corporation Commission has authorized Arizona Windsong to transfer its distribution system (Distribution System) to NTUA and to discontinue operations as a water utility upon the transfer and sale to NTUA.
4. NTUA has had a full opportunity to inspect the Distribution System and is fully informed of its condition.
5. Upon acquisition of the Distribution System, Arizona Windsong will cease operating as a water utility, and NTUA will be responsible for providing water utility service under such terms and conditions as stated in the NTUA Tariff.

**NOW THEREFORE**, in consideration of the premises, the covenants and representations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The foregoing recitals to this Transfer Agreement are incorporated into and made a part of this Transfer Agreement.
2. **Bill of Sale.** For the sum of **ten-thousand dollars (\$10,000)**, Arizona Windsong does hereby sell, assign, bargain, transfer, convey and set over its water Distribution System, including all pipes, service lines and meters to NTUA and NTUA agrees to purchase the aforementioned Distribution System from Arizona Windsong, to have and hold the same unto its successors and assigns forever. This sale and transfer of the Distribution System to NTUA is contingent upon approval by Arizona Corporation Commission.
3. **As Is.** This sale is on a "AS IS" basis, with no guarantees or warranties, either expressed or implied.

**IN WITNESS WHEREOF**, Arizona Windsong Water Co. and NTUA have executed this bill of sale as of the date set forth herein.

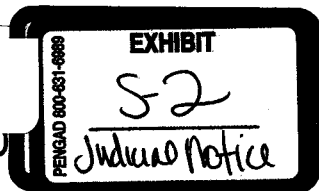
**ARIZONA WINDSONG WATER CO.**

**NAVAJO TRIBAL UTILITY AUTHORITY**

By: \_\_\_\_\_  
Lillie Paulsell  
President

By: \_\_\_\_\_  
Rex P. Kontz  
Deputy General Manager





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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

DOCKETED

JUL 25 2001

DOCKETED BY	<i>sd</i>
-------------	-----------

IN THE MATTER OF THE JOINT APPLICATION  
BETWEEN CONTINENTAL DIVIDE ELECTRIC  
COOPERATIVE, INC. AND THE NAVAJO  
TRIBAL UTILITY AUTHORITY FOR THE  
APPROVAL OF THE SALE OF ELECTRIC  
UTILITY PROPERTIES AND TRANSFER OF  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY

DOCKET NO. E-01824A-00-0504

DECISION NO. 63875

OPINION AND ORDER

DATE OF HEARING: June 4, 2001  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes  
APPEARANCES: Mr. Louis Denetsosie and Mr. Warren Denetsosie, on behalf of Navajo Tribal Utility Authority;  
Mr. Dennis Francisch, on behalf of Continental Divide Electric Cooperative, Inc.;  
Mr. Christopher Kempley, Chief Counsel, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On July 14, 2000, Continental Divide Electric Cooperative, Inc. ("Continental") filed an application with the Commission seeking authority for Continental to sell and transfer all of its electric transmission and distribution systems in Arizona to the Navajo Tribal Utility Authority ("NTUA").

1           2.       Pursuant to a Procedural Order issued April 26, 2001, public notice of the application  
2 and hearing date was published on May 14, 2001. Proof of publication was filed on June 4, 2001.  
3 No requests for intervention or opposition to the application were received.

4           3.       Continental is a New Mexico-based electric cooperative that provides electric service  
5 to New Mexico and Arizona customers. Continental serves approximately 25,000 customers, 1,691  
6 of which are located in Arizona. Continental's Arizona customers include 837 customers located  
7 within the Navajo Nation Indian Reservation and 854 customers located outside the reservation.  
8 Continental's Arizona customers are located in Apache County, along the Arizona-New Mexico  
9 border. The divisional office serving the Arizona customers is located in Gallup, New Mexico.

10          4.       NTUA was formed in 1965 by the Navajo Nation, a federally recognized Indian Tribe.  
11 NTUA's service area covers approximately 25,000 square miles within the Navajo Indian  
12 Reservation in Arizona, New Mexico, and Utah. NTUA provides utility service to approximately  
13 31,000 electric customers, 7,000 gas customers, and 26,000 water/wastewater customers.

14          5.       On April 13, 2000, Continental and NTUA entered into a purchase agreement under  
15 which NTUA will acquire Continental's transmission and distribution systems in Arizona. Under the  
16 agreement, Continental will transfer 38 miles of 69kV line; 172 miles of single-phase distribution  
17 line; 98 miles of three-phase distribution line; a fenced substation site; a power transformer  
18 (7.5mVA); and 45 various breakers. These assets represent less than six percent of Continental's  
19 total assets. The purchase price of the assets is \$2,300,000, compared to a book value of  
20 approximately \$2,113,163. NTUA will pay for the acquisition out of its general funds.

21          6.       Continental currently provides electric service in Arizona to Navajo Nation residents  
22 pursuant to a 25-year franchise agreement executed in 1964. At the end of the term of the agreement,  
23 the Navajo Nation exercised its option to purchase Continental's facilities. Continental has continued  
24 to serve the Navajo Nation customers under several extensions to the Franchise Agreement while  
25 negotiations regarding the sale of the facilities were conducted.

26          7.       Continental currently charges a monthly system/service charge of \$5.00, plus  
27 \$0.07680 per kilowatt hour ("kWh"). Based on average usage of 372 kWh, a residential Continental  
28 customer pays \$33.57 per month.

1           8.     NTUA's tariff schedules impose a monthly system/service charge of \$3.00 plus  
2 \$0.0660 per kWh. Based on the same usage, the average monthly bill would be \$27.55, a savings of  
3 \$6.02 compared to Continental.

4           9.     NTUA intends to provide outage and maintenance service to the former Continental  
5 customers from its Ft. Defiance office. The Ft. Defiance office is 15 miles closer than Continental's  
6 current service crew that is located in Gallup, New Mexico. As a result, it is expected that service  
7 response time and overall quality of service under NTUA will be equal or better than the service  
8 currently provided by Continental. In addition, NTUA will combine electric, water, and wastewater  
9 charges on one billing statement to those customers receiving such services from NTUA.

10          10.    Security deposits on accounts for Arizona customers of Continental will be applied to  
11 the customers' final bills and any credit balances will be refunded by Continental to customers.  
12 Existing Continental customers will not be required to pay any fees to NTUA to commence service.  
13 However, new customers of NTUA added after the close of the transaction will be subject to NTUA's  
14 normal deposit and connection fees.

15          11.    Under the Continental Cooperative structure, net margins from operations are used for  
16 improvements or paid out to the member/customers as Capital Credit refunds. Capital Credits are  
17 accrued based on the amount of electricity purchased, and are paid out on a twenty-year rotation  
18 cycle. Therefore, as an example, if the sale of Continental's assets is finalized in 2001, and the  
19 Arizona customers' accounts are terminated in 2001, the current Arizona customers will receive  
20 Capital Credit disbursements in 2021 based on usage in 2001.

21          12.    Continental does not track the System Average Interruption Frequency Index  
22 ("SAIFI"), which is the average number of times a customer's service is interrupted. However,  
23 according to information provided to Staff, Continental's average outage time for Arizona was 0.211  
24 hours in 1999, and ranged from 0.001 hours to 0.993 hours in the previous five years. The  
25 Commission's Consumer Services Division has not received any complaints regarding Continental in  
26 the past two years.

27          13.    Because NTUA is a nonjurisdictional entity, there is no formal record of complaints  
28 against the utility. Although NTUA does not track SAIFI, according to information provided to Staff

1 NTUA's average outage time in 1999 was 3.08 hours, and ranged from 2.93 hours to 4.46 hours in  
2 the previous five years. This outage range is within the Rural Utility Service guideline of 5.0 hours  
3 per year. NTUA indicated that it has no complaints pending.

4 14. In order to facilitate an orderly transition for current Continental customers, NTUA  
5 conducted a number of community meetings during October and November 2000. Based on an  
6 outline provided to Staff, customers were briefed regarding NTUA's budget payment plan, current  
7 rates, discounts for senior citizens, life-support care, safety, energy conservation, and utility service  
8 requests. Witnesses for both Continental and NTUA indicated that the primary concern expressed at  
9 the community meetings was with respect to potential discrimination by NTUA against customers not  
10 located on the Navajo Nation Reservation. According to the witnesses, those concerns were  
11 alleviated based on representations by NTUA that all customers would be treated equally, whether or  
12 not they reside within the boundaries of the Reservation or are members of the Navajo Nation. The  
13 Continental and NTUA witnesses also stated that they were not aware of any telephone calls or letters  
14 that had been received concerning the proposed transfer from Continental to NTUA. No customers  
15 appeared at the hearing to present comments regarding the proposed transaction.

16 15. Although NTUA is not regulated by this Commission, there are several agencies that  
17 oversee the utility's operations. The Government Services Committee of the Navajo Nation Council  
18 oversees NTUA's rates and operations while the Budget and Finance Committee receives financial  
19 and annual reports and has authority to order an audit of NTUA. NTUA is also subject to  
20 environmental, health, and safety laws imposed by the Navajo Nation Environmental Protection  
21 Agency. Finally, NTUA is subject to rules and regulations imposed by the Rural Utilities Service  
22 ("RUS") of the United States Department of Agriculture, to the extent that its projects are built with  
23 federal financial assistance. NTUA has no immediate plans to participate in electric restructuring or  
24 competition.

25 16. Based on an independent auditor's report prepared for NTUA in 1999, as well as  
26 documents submitted to RUS, Staff believes NTUA is financially sound and is capable of acquiring  
27 and operating Continental's electric assets in Arizona. According to Staff's calculations, NTUA had  
28 a times interest earned ratio ("TIER") of 2.50 in 1998 and 1.59 in 1999. A TIER of at least 1.50 is

1 generally preferred. The TIER measures the number of times earnings will cover interest payments.  
2 NTUA's ratio of current assets to liabilities was 1.39 in 1999. This ratio indicates the extent to which  
3 current liabilities are covered by the company's assets expected to be converted to cash in the near  
4 future. A ratio above 1.0 indicates an ability to meet current liabilities in times of financial hardship.  
5 Other financial indicators show that NTUA's total equity was approximately \$120 million and debt  
6 was \$32 million in 1999, representing an equity/debt ratio of 79 to 21 percent. Staff believes that  
7 NTUA's capital structure represents little financial risk and is consistent with sound financial health.

8 17. Staff recommends that the Commission approve the proposed sale of assets from  
9 Continental to NTUA based on NTUA's experience in providing utility service, lower rates that will  
10 be experienced by current NTUA customers, and the closer proximity of NTUA's service center to  
11 those customers. NTUA is financially sound and customers should receive service that is equal or  
12 superior to service currently provided by Continental. Further, customers may ultimately benefit  
13 from reduced administrative and overhead costs as a result of economies of scale attributable to  
14 NTUA's operations in Arizona.

#### 15 CONCLUSIONS OF LAW

16 1. Continental is a public service corporation within the meaning of Article XV of the  
17 Arizona Constitution and an electric distribution utility pursuant to A.R.S. Section 40-201.

18 2. The Commission has jurisdiction over Continental and over the subject matter of the  
19 application pursuant to A.R.S. Sections 40-252 and 40-285(A).

20 3. The transfer of Continental's electric utility assets in Arizona to NTUA, and the  
21 concomitant cancellation of Continental's Certificate is in the public interest.

22 4. Staff's recommendation in Finding of Fact No. 16 is reasonable and shall be adopted.

#### 23 ORDER

24 IT IS THEREFORE ORDERED that the application of Continental Divide Electric  
25 Cooperative be, and hereby is, granted.


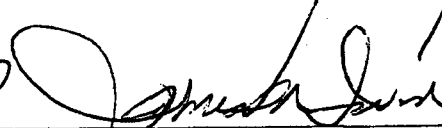
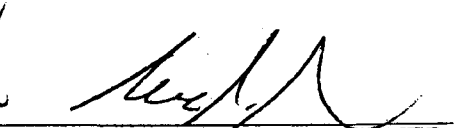
26 IT IS FURTHER ORDERED that Continental Divide Electric Cooperative be, and hereby is,  
27 authorized to transfer all of its electric utility assets to the Navajo Tribal Utility Authority.  
28

1 IT IS FURTHER ORDERED that Continental Divide Electric Cooperative's Certificate of  
2 Convenience and Necessity is hereby cancelled.

3 IT IS FURTHER ORDERED that Continental Divide Electric Cooperative shall file, within  
4 15 days of the close of escrow, an affidavit verifying that the sale has been consummated

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 CHAIRMAN COMMISSIONER COMMISSIONER  
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11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
12 Secretary of the Arizona Corporation Commission, have  
13 hereunto set my hand and caused the official seal of the  
14 Commission to be affixed at the Capitol, in the City of Phoenix,  
15 this 25<sup>th</sup> day of July, 2001.

16   
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

17 DISSENT \_\_\_\_\_  
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1 SERVICE LIST FOR:

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COOPERATIVE, INC.

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E-01824A-00-0504

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